IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5093 of 1998

For Approval and Signature:

HONOURABLE MS. JUSTICE R.M.DOSHIT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Petitioner(s)
Versus
THAKORE SAHEB PRITHVIRAJSINHJI ZALA & 1 - Respondent(s)

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Appearance :
MR SUNIT SHAH, GOVT PLEADER with MS MINI NAIR, AGP for the Petitioner
MR S TRIPATHI for MR HIMANSHU J MEHTA for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 2,

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CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT

Date : 18/09/2007

ORAL JUDGMENT

This is a petition preferred by the State Government under Article 227 of the Constitution of India against the judgment and order dated 28th

February, 1991 passed by the Gujarat Revenue Tribunal in Revision Application No.TEN.B.A. 984/1986. The petition arises from the proceedings under the Gujarat Agricultural Lands Ceiling Act, 1960 (hereinafter referred to as, **“the Act of 1960”**).

The respondent no.1 Thakore Saheb Prithvirajsinhji Zala is the successor of Thakore Saheb Surendrasinhji Zala, Ruler of the erstwhile princely state of Sayla. The said Shri Surendrasinhji owned agricultural lands at villages Sayla, Ratanpar and Velala admeasuring 771-Acres-36-Gunthas in aggregate. In the family arrangement effective from 1st January, 1959, the lands at village Ratanpar and Velala were distributed amongst the members of his family (17 in number) i.e. his wife, sons, daughters, daughters-in-law and grand children. Since the said family arrangement, though the lands were being managed by the said Shri Surendrasinhji, the income from the agricultural produce was distributed amongst the above-mentioned family members in the proportion of the land allotted to each of them. The said Shri Surendrasinhji passed away on 12th October, 1970.

After his death, on 1st October, 1971 revenue entry no.132 came to be made in the name of the aforesaid Shri Prithvirajsinhji Zala, the eldest son of the said Shri Surendrasinhji Zala. Another entry no.133 came to be made on 14th October, 1971 to record the names of the aforementioned family members as the successors-in-title of the said Shri Surendrasinhji. In the land ceiling case initiated under the Act of 1960, by order dated 19th November, 1975 made by the Mamlatdar, Sayla, the holding of the said Shri Prithvirajsinhji was calculated to be 120-Acres. Of the said land, 54-Acres-12-Gunthas of land was held to be excess land liable to be acquired by the State Government. The said order was sent to the Deputy Collector for approval. The Deputy Collector, by his order dated 30th November, 1976, observed that in view of the amendment of the Act of 1960 by Gujarat Act No.2 of 1974 effective from 1st April, 1976, the matter required a fresh consideration. The order of the Mamlatdar was accordingly set-aside. The matter was remanded for decision afresh in accordance with the amended act of 1960. Since the said order of remand, in Land Ceiling Case No.24/76-77, the

Mamlatdar, Sayla, by his order dated 31st December, 1983, decided the matter afresh. He took into consideration the aforesaid family arrangement of 1959 and considered the holding of each of the aforesaid 17 persons. In respect of the aforesaid Shri Prithvirajsinhji Zala, he computed his total holding as 218-Acres-35-Gunthas; of which 164-Acres-35-Gunthas was held to be excess land liable to be acquired by the State Government. By communication dated 6th April, 1984, the said order was approved by the Deputy Collector. The matter was taken up by the Commissioner of Land Reforms. He did not approve the said order. According to the Commissioner of Land Reforms, the family arrangement had taken place on 14th October, 1971 i.e. after 24th January, 1971. In absence of the declaration given by the District Collector under Section 8 of the Act of 1960, the said family arrangement had no sanctity in law and could not be taken into consideration. By communication dated 17th February, 1986 he directed the District Collector, Surendranagar to take the aforesaid order dated 31st December, 1983 in revision and to make order keeping in view Section 8 of the

Act of 1960. Pursuant to the said instruction, the District Collector, by communication dated 14th March, 1986, directed the Deputy Collector to exercise power of suo-motu revision under Section 37 of the Act of 1960. Pursuant to the said instructions, by notice dated 5th April, 1986, the Deputy Collector took the matter in suo-motu revision in Land Ceiling Revision Application No.14/84-85. The Deputy Collector, by his order dated 11th September, 1986, set-aside the aforesaid order dated 31st December, 1983 and remanded the matter to the Mamlatdar and Agricultural Lands Tribunal for decision afresh. Feeling aggrieved, the respondent no.1 the aforesaid Shri Prithvirajsinhji Zala preferred the above referred Revision Application No.TEN.B.A.984/1986 before the Gujarat Revenue Tribunal (hereinafter referred to as, **"the Tribunal"**). The Tribunal, by impugned judgment and order dated 28th February, 1991, accepted the revision application and set-aside the order of remand dated 11th September, 1986 made by the Deputy Collector, Limdi. Therefore, the present petition.

The Tribunal has observed that the aforesaid

family arrangement was made effective from 1st January, 1959 i.e. before 15th January, 1959. The said family arrangement was also acted upon in as much as the income from the agricultural produce was divided amongst the above referred 17 members of the family in proportion of their holding. As the said family arrangement was made prior to 15th January, 1959, no declaration as envisaged by Section 8 of the Act was necessitated. Nor in the absence of such declaration the said family arrangement became nonest in the eye of law. The Tribunal also held that the exercise of power of suo motu revision after some three years was time-barred.

Mr.Shah, learned Government Pleader has appeared for the State Government. He has submitted that the family arrangement took place on 14th October, 1971 i.e. after 24th January, 1971 and before the specified date. The declaration in terms of Section 8 of the Act was, therefore, necessary to give effect to the said family arrangement. He has also submitted that the Deputy Collector did not exercise power of suo motu revision under Section 37 of the Act of 1960 but

he was acting pursuant to the reference made by the State Government. He has submitted that the order dated 31st December, 1983 made by the Mamlatdar in Tenancy Case No.24/76-77 was not communicated to the Deputy Collector. For the purpose of limitation, it is the date of the knowledge from which the period of limitation shall commence. The Tribunal was, therefore, not right in holding that exercise of power of suo motu revision by the Deputy Collector was not within the period of limitation. He has submitted that under Section 8 of the Act of 1960, it was not the Mamlatdar who was authorised to recognise family arrangement. The Mamlatdar, therefore, could not have accepted the family arrangement as legal and valid to compute the total holding of the said Shri Prithvirajsinhji Zala. In support of these submissions, he has relied upon the judgment of this Court in the matter of **D.Saibaba v/s. Bar Council of India and another** [2003(4) GLR 3676].

The petition is contested by Mr.Tripathi. He has submitted that the family arrangement made on 1st January, 1959 could not be said to have been made

with an intention to defeat the object of the Act of 1960. The said family arrangement was acted upon immediately during the life time of the late Shri Surendrasinhji Zala. He has also submitted that the major part of the holding of the late Shri Surendrasinhji Zala was Bid land. Such Bid land was excluded from computation of the total holding for the purpose of the Act of 1960. He has also submitted that in any view of the matter, this Court, in exercise of its supervisory jurisdiction under Article 227 of the Constitution of India would not intervene with the impugned judgment of the Tribunal unless the order is made without jurisdiction or in excess of jurisdiction or the order suffers from the vice of perversity. In the present case, that is not even the plea of the petitioner - State Government. In support of his submissions, he has relied upon the judgments in the matters of **Jayantibhai Dahyabhai Patel v/s. State of Gujarat and others** [2007(2) GLR 1126]; of **Lubi Electrocals Limited v/s. A.T.Painter** [2007(2) GLR 1085]; of **State of Gujarat v/s. Bhavsinh Jaymal (Since Decd.) through his heirs and legal representatives Fuliben Bababhai and others** [2007(2)

GLR 1036] and of **Pannaben Rameshchandra Shethji v/s. The State of Gujarat** [1995(2) GLH 447].

It should be noted that the present petition preferred in the year 1998 against the order of the Tribunal made in the year 1991 is grossly belated. The delay has been explained by the State Government by affidavit dated 5th August, 1998 made by one Shri A.S.Gamit, Under Secretary to the Government of Gujarat, Revenue Department. As stated in the said affidavit, some officers in the Government did not take timely action in such matters and allowed the matters to remain unattended for several years. Be that as it may, as the petition has been entertained inspite of the aforesaid gross delay, I do not intend to dismiss the petition on the grounds of delay and laches. One Shri B.P.Shah, Deputy Secretary to the Government of Gujarat, Revenue Department has also made affidavit on 13th June, 2007 to explain how the powers of suo-motu revision under Section 37 of the Act of 1960 are delegated by the State Government upon the Deputy Collector.

I believe that the entire exercise undertaken by the Government authorities was uncalled for. As recorded hereinabove, the controversy centers around the family arrangement made on 1st January, 1959. It has been held by the Tribunal and the authorities below time and again that the said family arrangement was given effect to immediately. There is no reason for this Court to believe that the said finding is not correct and that the family arrangement was not given effect until the death of the late Shri Surendrasinhji Zala. The Act of 1960 came in force on 15th June, 1961 (the date appointed by the State Government by notification in the official Gazette). The words “appointed day” are defined in clause (4) of sub-sec.(1) of Section 2 of the Act to mean “**the day on which the Act comes into force**”. Section 8 of the Act deals, inter alia, with the transfers and partitions made after 15th January, 1959 but before the commencement of the Act. Sub-sec.(1) thereof provides that “...**Where after 15th day of January, 1959 but before the commencement of this Act, or after 24th day of January, 1971, but before the specified date, any person has transferred whether by**

sale, gift, mortgage, with possession, exchange, lease, surrender or otherwise or partitioned any land held by him, then notwithstanding anything contained in any law for the time being in force such transfer or partition shall, unless it is proved to the contrary, be deemed to have been made in anticipation in order to defeat the object of this Act. Where such transfer or partition was made after 15th day of January, 1959 but before the commencement of this Act or in order to defeat the object of the Amending Act of 1972 where such transfer was made after 24th day of January, 1971 but before the specified date.

Provided that xxx xxx xxx xxx

Provided further that xxx xxx xxx

Sub-sec.(2) thereof reads as under:

"Any person affected by the provisions of sub-section (1) may, within the prescribed period and in the prescribed form, make an application to the Collector for a declaration that the transfer or partition was not made in anticipation in order to defeat the object of this Act, or as the case may be, of the Amending Act of 1972." Thus, by legal fiction introduced in sub-sec.(1) of Section 8 of the Act of

1960, the transfers and partitions of the lands made after 15th January, 1959 and before the date of the Act (i.e. 15th June, 1961) are deemed to have been made in anticipation in order to defeat the object of that Act. A similar fiction has been attached to the transfers or partitions of the lands made after 24th January, 1971 but before the specified date i.e. 1st April, 1976 (the date of coming into force of the Amending Act of 1972 (the Gujarat Act No.2 of 1974)). What the Commissioner of Land Reforms considered was the revenue entry no.133 made on 24th October, 1971. According to him, the aforesaid family arrangement became effective on 24th October, 1971, the date on which the entry no.133 came to be made in the revenue record i.e. after 24th January, 1971 and before the specified date. In the opinion of the Commissioner, the said family arrangement required declaration as envisaged by sub-sec.(2) of Section 8 of the Act of 1960. I am unable to agree with that view.

As recorded hereinabove, the family arrangement had become effective on 1st January, 1959 i.e. before 15th January, 1959. Even if it is believed that the

said family arrangement became effective after the death of the late Shri Surendrasinhji Zala, then also the said family arrangement would become effective on 13th October, 1970 i.e. prior to 24th January, 1971. In neither case the said family arrangement would be hit by deeming fiction contained in sub-sec.(1) of Section 8 of the Act. The revenue entry is incidental. By the revenue entry made on 14th October, 1971, the revenue authority recorded the family arrangement which had become effective on 1st January, 1959 or on 13th October, 1970. The revenue entry merely recorded the factum of the existence of the family arrangement. It was not in itself a family arrangement.

In above view of the matter, I am of the opinion that the aforesaid family arrangement did not require a declaration as envisaged by sub-sec.(2) of Section 8 of the Act of 1960, that 'it was not made in anticipation in order to defeat the object of that Act'. The Mamlatdar, therefore, was acting within his authority while taking into consideration the said family arrangement for the purpose of computation of

total holding of the respondent no.1 Shri Prithvirajsinhji Zala.

As to the exercise of power of suo-motu revision under Section 37 of the Act of 1960, I agree with the view taken by the Tribunal. Section 37 of the Act of 1960 confers power of revision, suo motu or on a reference made by the State Government, upon the Collector. The proviso thereof provides for a period of limitation of one year from the date of such order. Thus, the power of revision is required to be exercised by the Collector, either suo motu or on reference made by the State Government, within one year from the date of the order. Mr.Shah is not right in his submission that the order dated 31st December, 1983 made by the Mamlatdar and ALT was not communicated to the Deputy Collector and that the power of revision on reference made by the State Government was exercised within one year from the date of the knowledge. As recorded hereinabove, the said order of 31st December, 1983 was approved by the Deputy Collector under his communication dated 6th April, 1984.

In the circumstances, the Tribunal rightly set-aside the order of remand and the order for inquiry afresh made by the Deputy Collector. No other contention is raised in this petition. The petition is dismissed with cost. Rule is discharged.

(Ms. R.M.Doshit, J.)

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